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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Reallocation of Television Channels)
60-69, the 746-806 Band) ET Docket No. 97-157

To: The Commission

JOINT COMMENTS OF UNITED TELEVISION, INC.
and JOHN C. SIEGEL

United Television, Inc. ("UTV") and John C. Siegel ("Siegel")(UTV and Siegel referred to collectively as "Commentors") hereby submit the following proposals:

1. All pending applications for new stations on channels 60-69 that were timely filed either on or prior to September 20, 1996, or at any time in response to a cut-off notice, should continue to be processed and should be accorded the same protections as existing stations and outstanding permits.
2. If the Commission rejects this approach, Commentors alternatively propose that:
 - a) All timely filed applications outside the major metropolitan areas subject to the 1987 freeze should be processed, and the prevailing applicant/permittee should receive the same protections accorded existing stations for the duration of the DTV transition period.
 - b) Applicants who filed timely applications for new stations within the major metropolitan areas subject to the 1987 freeze should be given thirty days within which to submit showings why the public interest would be served by allowing their applications to be processed. Such showings could address, among other things, the extent to which the proposed new station would contribute to competition in local and national television broadcasting, and the availability of alternative spectrum authorized for public safety

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services. The applicants would also be permitted to propose an alternative frequency below channel 60 that would not cause prohibited interference to authorized NTSC stations and the new DTV allotments.

- c) The Commission could decide, based on these showings, whether (i) to dismiss the pending applications, (ii) to allow them to be processed for the current vacant allotment, or (iii) to propose to allow them to be amended to specify an alternative channel.
- d) If alternative 2(c)(iii) above is selected, the Commission would conduct an expedited rule making proceeding to substitute the alternative channel for the current allotted channel and, if adopted, would allow the applicants to amend their applications to specify the alternative channel without being subject to additional competing applications. These amended applications would then be processed, and the prevailing applicant/permittee would be fully protected until the end of the transition period.

UTV is one of at least two competing applicants for a construction permit to build a new analog television station on vacant channel 69, Paintsville, Kentucky. Siegel is one of six competing applicants for a construction permit to build a new analog television station on vacant channel 69, Des Moines, Iowa, hereby submit these Joint Comments in the captioned rule making proceeding. Although there may be other aspects of the July 10, 1997 Notice of Proposed Rule Making ("NPRM" or "Notice") in this proceeding about which the Commentors have concerns, these Joint Comments focus on the Commission's proposed treatment of pending applications for vacant channels in the 746-806 MHz band.

The NPRM proposes to reallocate channels 63, 64, 68 and 69 for public safety. NPRM at ¶11. The remaining spectrum for channels 60, 61, 62, 65 ,

66 and 67 is proposed to be reallocated to the fixed and mobile services, as well as continuing to be available for broadcast use. NPRM at ¶13.

Existing analog television stations on these channels are to remain and be fully protected during the DTV transition period. NPRM at ¶17. And the Commission has proposed to treat outstanding permits for unbuilt stations in these bands the same way. NPRM at ¶21. With regard to pending applications for new stations in these bands, the Commission has preliminarily expressed the belief that the public would be best served "by maximizing the potential availability of this spectrum for public safety and new services," but has invited comments on methods for dealing with these applications. NPRM at ¶22.

As stated above, Commentors submit as their primary proposal that all pending applications for new stations on channels 60-69 that were timely submitted either on or prior to September 20, 1996, or in response to a cut-off notice, should continue to be processed and should be accorded the same protections as existing stations and outstanding permits. In the DTV Proceeding in 1996, the Commission virtually invited applications for vacant NTSC allotments by establishing a September 20, 1996, cut-off date for vacant allotments, after which unapplied for allotments were to be deleted from the rules. See Sixth Further Notice of Proposed Rule Making, MM Docket No. 87-268, 11 FCC Rcd 10968, 10992 (¶60)(1996). The Commission also stated that such timely filed applications would continue to be placed on

cut-off notices after September 20, and that competing applications could be filed in response to such notices. Id. Cut-off notices for many of the vacant channels have, in fact, been issued.

Commentors, as well as numerous other parties, have spent considerable time and effort to identify available sites, to obtain engineering exhibits, and to prepare and file applications in response to the Commission's invitation. It would be highly inequitable now to deprive them of the right to prosecute those applications. The equitable position of Commentors and other pending applicants was recognized by the Congress in its 1997 amendments to the Communications Act. Those amendments, which among other things require the Commission to reallocate channels 60-69 while protecting full power broadcast stations during the transition period, authorize the Commission, with respect to competing applications for vacant allotments on file as of July 1, 1997, to award the permit by competitive bidding, and require that each such proceeding (a) be limited to the pending competing applicants and (b) provide those bidders a period of 180 days to reach a private settlement without being subject to the limitations of Section 73.3525 of the Commission's rules. See Section 309(l) of the Communications Act of 1934, as amended (by the Balanced Budget Act of 1997, Section 302(a)). No exception was made in these provisions for pending applications for channels 60-69, evidencing a Congressional intent that they be treated no differently than applications for other vacant channels.

Commentors submit that the public interest would best be served by allowing all timely filed, pending applications to be processed, and according full protection for the successful applicant/permittee until the end of the DTV transition period. Such an approach would be most likely to provide for prompt construction of new stations and the increased competition they can bring.

If the Commission is not inclined to adopt this approach, Commentors submit that pending applications should not be dismissed at least in those situations where activation and protection of the proposed new station would advance competition, and where it is likely that reallocation of the spectrum for the particular allotment is not essential for public safety and new services. To this end, Commentors have submitted their alternative proposal. See, infra, pp. 1-2.

The limited number of existing broadcast stations in each of the markets for which the Commentors have applied has both limited the degree of broadcast competition within each of those markets, and adversely affected the ability of emerging networks to maximize their national coverage and thereby compete against the established networks. The same is likely to be true with respect to the other vacant allotments which are subject to this proceeding. There thus would be distinct public interest benefits from allowing the pending applications to be processed rather than being dismissed. Given these benefits, the equities deriving from the expectations

of the applicants, and the limited number of vacant allotments for which timely applications were filed, Commentors submit that the public would not be best served by automatically dismissing the pending applications in order to "maximize[] the potential availability of this spectrum for public safety and new services" for which, in most markets, there is likely to be an adequate supply of authorized and available spectrum without having to reallocate these few applied for, vacant allotments prior to the end of the DTV transition.

Respectfully submitted,

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